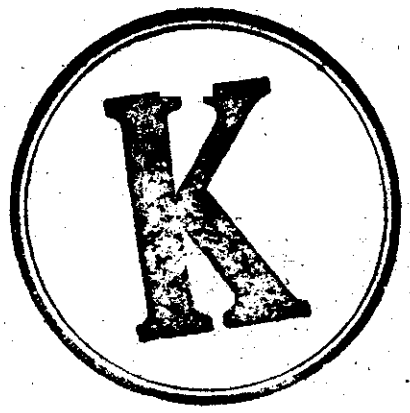

1946.

File No. B. Town Planning/46
Legal Department
B **BRANCH**

P. 16 (E)
1946

Subject:— A Bill to amend the Bombay Town Planning Act, 1945 (Amendment of Section 15) or L.A. Bill No. IV of 1946 Bombay Act No. XIV of 1946.

File No. B. Town Planning/46

Gen. 104 e.

473-B

Office of the R.L.A.

New section 15 AA:- The amendments suggested by the Consulting Surveyor are unnecessary. By virtue of the provisions of section 3 (j) of the Act, the final scheme can make provision for the suspension of rules, by-laws, Acts and other provisions; sub-section (2) of the new section 15 AA is therefore correctly drafted, and it is proper that an order made under sub-section (1) should cease to operate in the event of the coming into force of the final scheme.

It is not necessary to make any provision in respect of the revocation of the scheme, since the revocation would be ~~of~~ a scheme that has come into force. Since an order under sub-section (1) of section 15 AA will cease to operate on the coming into force o the scheme, it will not be in operation at the time of its revocation. Any provision made under section 3(j) will automatically cease to operate on such revocation.

Section 15:- From the wording of sub-section (3) of section 15 it appears that the restrictions imposed by subsections. (1) and (2) thereof do not cease to operate in the event of a scheme coming into force. Since, however, the scheme will make adequate provision under section 3 - particularly clauses (b), (d) and (i) and the

Municipal law would apply to all buildings (except in so far as it is suspended), it is obvious that the restrictions in sub-section (1) of section 15 are not meant to operate after the scheme comes into force. As sub-section (3) of section 15 at present reads the restriction in sub-section (2) also ceases to operate, so that in the event of a scheme not being sanctioned or being withdrawn, the right to compensation in respect of the damage, loss or injury referred to therein is revived. Obviously this was not intended. It would be advisable to amend sub-section (3) of section 15 by substituting "sub-section (1) "for the words "this section " and adding at the end the words "for in the event of the coming into force of the final scheme."

Since, it is necessary to enact the Act as early as possible the amendment of section 15 may be taken up immediately after enactment, as for such amendment the concurrence of the Governor General would be needed.

The objections raised by Zaiwalla & Co. in its letter p.89 et seq:- Para. 2 of the letter has no bearing on the Bill, to which no schedule is appended.

No doubts need be entertained about the wires of the new section.

Contd.

The objection that the amendments now being enacted will permit the Municipality to take its own time over the preparation of a scheme needs no consideration.

Lastly, there is no objection the the Municipality refusing to issue a commencement certificate unless the applicant agrees not to claim compensation in respect of buildings put up in pursuance of such certificate in case they are later on pulled down or removed by the Municipality. It would have been perfectly legal totally to forbid all building activity under section 15, and there is nothing illegal in giving a conditional permission to build. This is not a case of expropriation by law and the provisions of section 299 of the Constitution Act are not attracted by it.

P.N.M.
20/3/46.

Remembrancer of Legla Affairs.

U.R.to G.D., No. 2201, dated the 20th March 1946.

MM
16/7-

Modified R.L.A.'s opinion No. 5318 dated the 22rd May 1947

Office of the R.L.A.

Attention is invited to paragraph 4 of R.L.A's opinion No. 5052, dated the 9th July 1945.

While it is true that the proceedings of the Municipal Corporation are regulated by section 36 of City of Bombay Municipal Act, section 52 (2)(v) of the Town Planning Act confers on Government the power to make rules to determine the extent to which the proceedings of local authorities under the Town Planning Act shall be regulated by any municipal or local law applicable to such authorities. What the Municipal Commissioner refers to in his letter is the proceedings of the Corporation under the City of Bombay Municipal Act.

Rule 26 of the Rules made under the Town Planning Act, as it stands at present lays down that:-

"The proceedings of local authorities under the Bombay Town Planning Act, 1915, shall be regulated by the municipal or local law applicable to such authorities so far as may be consistent with the provisions of that Act and these rules."

All that is needed, therefore, is an amendment of this rule and no amendment of section 52(2)(v) of the Town Planning Act is necessary.

P.N.M. 7/5/46
o.c. Remembrancer of Legal Affairs,
U.R.to G.D.No.3411, dated 7th May 1946.

MM

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No. 4088
Legal Department,
Bombay Castle, 31st May 1946.

From
P.N.Moos, Esquire, Bar-at-Law, I.C.S.,
Secretary to Government

To
The Secretary to the Governor of Bombay.

Subject:- A Bill to amend the Bombay Town Planning Act, 1915.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for the assent of His Excellency the Governor General an authentic copy of the Bill to amend the Bombay Town Planning Act, 1915, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 22nd May 1946 and on the 23rd May 1946, respectively.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause (a), (b), (c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject-matter of the Bill falls under entries 13 and 14 in List II in the Seventh to the Government of India Act, 1935, and also

Contd.

generally under all the entries in List III in the said Schedule in which the Acts that may be suspended under new section 15 AA(1) (in clause 4) fall. As the provisions of clause 4 of the Bill would be repugnant to the provisions of existing Indian laws relating to matters falling under those entries in the Concurrent Legisbtive List, it will be necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107 (2) of the Government of India Act, 1935.

4. I also forward herewith thirteen copies of each of the papers noted in the margin.

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reeasons.
2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council — The Bill was not referred
3. Bill as read for the third time and passed by the Bombay Legislative Council.

to a Select Committee.

5. Extracts from the proceedings of the Bombay Legislative Assembly and the Bombay Legislative Council will be forwarded in due course.

I have the honour to be
Sir,
Your most obedient servant,

Id/- P.N.M. 31/5/46.

Secretary to the Governor of Bombay,
Legal Department.

Through the General Department.

MM
16/7-

No.G.S. 1764
Office of the Governor's Secretary
Government House,

From

G.G.Drewe, Esquire, CBE.ICS.
Secretary to the Governor of Bombay

To

The Secretary to the Bombay Legislative
Council
Assembly
Ganeshkhind, 7th June 1946.

Subject: A Bill to amend the Bombay Town Planning Act, 1915.

Sir,

With reference to the Bill to amend the Bombay Town Planning Act, 1915, which was read for the third time and passed at the meeting of the Bombay Legislative Assembly and the Bombay Legislative Council on the 22nd May and 23rd May respectively, I am directed to state, for the information of the Hon'ble the President / Speaker that as the provisions of existing Indian laws, that is, those Acts which may be suspended and fall under the entries in List III of the Seventh Schedule to the Government of India Act, 1935, the Bill will have to be reserved for the consideration of His Excellency the Governor-General with reference to section 107(2) of the Government of India Act, 1935. His Excellency the Governor is accordingly pleased, under section 75 of the Act, to declare that he reserves the Bill for

Clause 4 of the bill are repugnant to the provisions of

Contd.

the consideration of the Governor-General.

I have the honour to be,
Sir,
Your most obedient servant,

Sd/- G.G.Drewe.

Secretary to the Governor of Bombay,

No. G.S. 1765.
Ganeshkhind, 7th June 1946.

Copy forwarded with compliments to:-

The Secretary to Government, Legal Department, with reference to his letter No.4088, dated 31st May 1946.

The Secretary to Government, General Department, With reference to his endorsement No.5355/33/11845-J, dated 1st June 1946.

By order of the Governor of Bombay

Sd/-

Secretary to the Governor of Bombay.

16/7-

Bills.

A Bill to amend the Bombay Town Planning Act, 1915.

GOVERNMENT OF BOMBAY.
LEGAL DEPARTMENT.
Resolution No. 3616
Bombay Castle, 14th May 1946.

Memorandum from the General Department, No. 5355/33J dated the 14th May 1946. Transferring for necessary action, the papers relating to a Bill to amend the Bombay Town Planning Act, 1915.

RESOLUTION.- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 14th May 1946, as Bill No. IV of 1946.

2. The Bill and the Statement should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 15th May 1946.

3. The dates of the various publications should be reported to the Secretary, to the Bombay Legislative Assembly.

By order of the Governor of Bombay.

M.G.Monani

Assistant Remembrancer of Legal Affairs.

P.T.O.

To

The Manager, Government Central Press, Bombay (with the Bill and SPO.R., and with a request that 230 Gazette copies of the Bill and the Statement may be forwarded to the Secretary to the Bombay legislative Assembly for distribution to the Members of the Bombay Legislative Assembly and 25 copies for the use of the Legal - Department),

The General Department,
*The Oriental Translator to Government,
The Secretary to Bombay Legislative Assembly,
) with a copy of the Bill and S.O.R.

*With five extra copies. of the Bill.

MM

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Acts.

Publication of the Bombay Town Planning (Amendment) Act, 1945.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 197 - L
Bombay Castle, 14th July 1946.

Letter to the Secretary to the Governor, No 4088 dated the 31st May 1946.

Letter from the Secretary to the Governor, NO. dated the 15th July 1946:

"With reference to your letter No.4088, dated 31st May 1946, on the above subject, I am directed to forward herewith the authentic copy of the Bill to amend the Bombay Town Planning Act, 1915, with His Excellency the Governor-General's assent signified thereon."

RESOLUTION:- The law should be published as Bombay Act No XIV of 1946 in the Bombay Government Gazette, dated 18th ~~September~~ July 1946.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari Scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the General Department with reference to the memorandum from that Department No. 5355/33-I, dated the 13th/14th May 1946.

By order of the Governor of Bombay,

K.M. Chitnvis

Assistant Secretary to Government.

Contd.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department).

The General Department,)
*The Oriental Translator to Government,) with a copy of
The Secretary to the Bombay Legislative Council,) the Act.
The Secretary to the Bombay Legislative Assembly,)

with five extra copies of the Act.

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~~Bombay Act No. XVII of 1946.~~

~~L. A. BILL No. IV OF 1946.~~

An Act to amend the Bombay Town Planning Act, 1915.

(As read for the third time and passed by the Legislative Assembly on the 22nd May 1946.)

(As read for the third time and passed by the Legislative Council on the 23rd May 1946.)

WHEREAS it is expedient to amend the Bombay Town Planning Act, 1915, for the purposes hereinafter appearing; It is hereby enacted as follows:— Bom. I of 1915.

1. This Act may be called the Bombay Town Planning (Amendment) Act, 1946. Short title

2. In section 10 of the Bombay Town Planning Act, 1915, hereinafter called the said Act,— Bom. I of 1915. Amendment of section 10 of Bom. I of 1915.

(*i*) to sub-section (*1*), the following proviso shall be added, namely

"Provided that on application made by the local authority in that behalf, the Provincial Government may from time to time by notification in the *Official Gazette* extend the said period of twelve months, but the aggregate period of such extensions shall not exceed twelve months."

(*ii*) in sub-section (*2*), for the words "twelve months from the date of such notification", the words, figure and brackets "the period specified in sub-section (*1*), or where the said period is extended under the proviso thereto, such extended period", shall be substituted.

3. In section 15 of the said Act— Bom. I of 1915. Amendment of section 15 of Bom. I of 1915.

(*a*) in sub-section (*1*)—

(*i*) in clause (*b*), for the words "as may be consistent with the scheme" the words "as the local authority may, with the previous approval of the Provincial Government, think fit to impose" shall be substituted;

(*ii*) in sub-clause (*i*) of clause (*c*), for the words "which is such as to contravene the scheme" the words "in respect of which such contravention is made" shall be substituted;

(*b*) to sub-section (*2*), the following shall be added, namely:—

"Provided that such claim to compensation in the excepted cases shall be subject to the conditions of any agreement entered into between such person and the local authority."

Insertion of new section 15AA in Bom. I of 1915.

4. After section 15 of the said Act, the following new section shall be inserted, namely :—

Power to Provincial Government to suspend rule, bye-law, Act, etc.

"15AA. (*1*) When a local authority has published a declaration of intention to make a scheme, the Provincial Government may, by order published in the *Official Gazette*, suspend, to such extent only as may be necessary for the proper carrying out of the scheme, any rule having the force of law, by-law, Act, or other provision which is in force in the area proposed to be included in the scheme and which the Provincial Legislature or the Provincial Government, or a local authority within the Province is competent to amend.

(*2*) Any order issued under sub-section (*1*) shall cease to operate in the event of the Provincial Government refusing to sanction the making of the town planning scheme, or in the event of the sanction of the Provincial Government for the making of such scheme lapsing, or in the event of the Provincial Government refusing to sanction the draft scheme or the final scheme, or in the event of the withdrawal of the scheme under section 40A, or in the event of the coming into force of the final scheme."

Government of Bombay.

LEGAL DEPARTMENT

[L. A. BILL No. IV OF 1946.]

(As read for the third time and passed by the Legislative Assembly on the 22nd May 1946.)

(As read for the third time and passed by the Legislative Council on the 23rd May 1946.)

An Act to amend the Bombay Town Planning Act, 1915.

[Mr. G. D. VARTAK, B.A., M.L.A.]

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS

A. BILL No. IV OF 1946 (AN ACT TO AMEND THE BOMBAY TOWN PLANNING ACT, 1915).

Mr. G. D. VARTAK (Minister for Local Self-Government): Sir, I introduce Bill No. IV of 1946 (An Act to amend the Bombay Town Planning Act, 1915) as read for the third time and passed by the Legislative Assembly on the 22nd of May 1946.*

The Honourable the PRESIDENT: The Bill is introduced.

Mr. G. D. VARTAK: Sir, I now move that the Bill No. IV of 1946 (An Act to amend the Bombay Town Planning Act, 1915) as read for the third time and passed by the Legislative Assembly on the 22nd May 1946 be read a first time.

Question proposed.

Mr. G. D. VARTAK: Sir, I shall not take much time of this honourable House as the Bill is very simple and short. The area of Mandvi in the City of Bombay was devastated by the explosions which occurred in the month of April 1944, and it was thought advisable to apply the Town Planning Act to that area. The Bombay Municipal Corporation declared its intention to make a town planning scheme for this area and Government gave sanction to the making of the scheme. Now, certain difficulties have arisen in the application of the Town Planning Act to the Mandvi area and this Bill seeks to remove these defects. Particular attention is invited to section 10 (*1*) of the Town Planning Act under which the local authority has to prepare a draft scheme within 12 months from the date of the notification sanctioning the making of the scheme. Now, in this area of Mandvi, there are about 450 tenancies and the local authority has to consult all these property owners before preparing the draft scheme. The period of 12 months for this purpose is very short and, therefore, this Bill seeks to enable the Government to give more time to the local authority by extending this period by one year more.

The second amendment is consequential, and the third one deals with the granting of the commencement certificates. Here the wording was rather defective and in order to remove this defect, the amendment is sought to be made.

I, therefore, move that the first reading of the Bill be accepted by this honourable House unanimously.

Question put, and agreed to.

* Appendix 4.

Mr. G. D. VARTAK : Sir, I beg to move that Bill No. IV of 1946 (An Act to amend the Bombay Town Planning Act, 1915) as read for the third time and passed by the Legislative Assembly on 22nd May 1946 be read a second time.

Question put, and agreed to.

Bill read Clause by Clause.

Clause 1 (*Short title*) ordered to stand part of the Bill.

Clause 2 (*Amendment of section 10 of Bom. I of 1915*) ordered to stand part of the Bill.

Clause 3 (*Amendment of section 15 of Bom. I of 1915*) ordered to stand part of the Bill.

Clause 4 (*Insertion of new section 15AA in Bom. I of 1915*) ordered to stand part of the Bill.

The Preamble ordered to stand part of the Bill.

Mr. G. D. VARTAK (Minister for Local Self-Government) : Sir, I beg to move that Bill No. IV of 1946 (an Act to amend the Bombay Town Planning Act, 1915) as read for the third time and passed by the Legislative Assembly on the 22nd May 1946 be read a third time and passed.

Question put, and agreed to.

The Honourable the PRESIDENT : Bill No. IV of 1946 (An Act to amend the Bombay Town Planning Act, 1915) as read for the third time and passed by the Legislative Assembly on 22nd May 1946, is read a third time and passed.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.